



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4412-99

26 November 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable issued on 12 June 1946 and that he be paid for time served from 7 June 1945 to 12 June 1946.

2. The Board, consisting of Kastner, Cali, and Newman, reviewed Petitioner's allegations of error and injustice on 23 November 1999, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner first enlisted in the Marine Corps for the duration of the war on 17 May 1943. His mother signed the consent form for enlistment certifying that he was born on 6 June 1925. On 4 July 1943 he was admitted to a naval hospital for dislocated cartilage in his right knee. On 7 July 1943 a board of medical survey found him unfit for service and discharge was recommended. Petitioner was discharged on 17 July 1943 by reason of physical disability with a "very good" characterization of service.

d. Petitioner enlisted again in the Marine Corps four years on 7 June 1945. No prior service was noted on his enlistment documents. His parents signed the consent forms certifying his date of birth was 6 June 1928.

e. On 22 August 1945, Petitioner made a statement that he had some friends sign the "consent to enlistment" forms, as he could not locate his parents, and then had the papers notarized. He admitted to concealing the fact that he had prior Marine Corps and Army service, had enlisted in the Army on 12 April 1944, and was discharged on 7 June 1944 for being underage. He stated that he wished to remain in the Marine Corps. On this date, Petitioner pay account indicates his pay and allotment were stopped. His pay account states "Facts warrant presumption frd. enl. Not to be paid until auth by HQMC."

f. On 8 March 1946, the commanding officer (CO) advised the Commandant of the Marine Corps that Petitioner had been held in a fraudulent enlistment status since 22 August 1945 and the CO was awaiting verification of his prior service before making a recommendation in the case. On 19 March 1945, a psychiatric evaluation described Petitioner as an immature, emotionally unstable individual whose past and present history indicated maladjustment. He was also described as a pugnacious, argumentative individual who would undoubtedly be in some kind of trouble all of the time. Retention was not recommended.

g. On 8 April 1946, the CO recommended that Petitioner be separated as undesirable by reason of fraudulent enlistment. The CMC approved the recommendation and Petitioner received an undesirable discharge on 12 June 1946. The pay record shows that as of 30 April 1946 he had \$455.20 on the books and that upon discharge a final settlement was made. The amount of that settlement is not shown in the record. There is no evidence that he took any leave during this period of service.

h. Petitioner contends that he never received any active duty pay for his period of service from July 1945 to June 1946. He notes that subsequent to his discharge from the Marine Corps, he served in the Army from 25 August 1950 until he retired on 5 January 1971. He does not provide a copy of the DD Form 214 he received from the Army upon retirement. However, he does provide a letter from the Defense Finance and Accounting Service (DFAS) which states, in part, as follows:

The paybill (Petitioner) retired on reflects years of service for base pay in increments of two years (18,20,22 etc), therefore, if he did complete another one year, three months, and two days of service, it would not impact his service for base pay. Since he was retired from the military based on disability, his pay was computed based on the percentage of disability he was awarded. This far exceeds the retired pay he would have received if it was based on service and his service for percent multiple.

Petitioner also asserts that his undesirable discharge for the second period of Marine Corps service was unfair.

i. A staff member of the Board contacted DFAS and was told that it could not now determine how much, if any, pay Petitioner received during his last enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that Petitioner's earlier periods of service were during World War II. Although his enlistments were procured through fraud, it is clearly evident to the Board that all he wanted to do was to serve his country. The Board noted that he had no disciplinary actions and went on to serve honorably for more than 20 years in the Army. In view of his subsequent honorable service, the Board believes that it is unjust to continue to stigmatize his second period of Marine Corps service, from 7 June 1945 to 12 June 1946, as undesirable is unjust. Accordingly, the Board concludes that it would be appropriate and just to recharacterize the undesirable discharge to a general discharge under honorable conditions.


The evidence of record indicates that there was a final settlement of Petitioner's pay account when he was discharged. The amount paid cannot be determined at this late date by the Board. Absent convincing evidence to the contrary, a presumption exists that all monies which had accrued were paid. Petitioner provides no evidence to support his claim that he was not paid.

The Board notes that Petitioner desires credit for his three periods of active service. Since he retired from the Army, that branch of service must recompute his total service and make any necessary changes. He will have to furnish a copy of the DD Form 214 issued as a result this Board's action and the discharges he was issued by the Marine Corps in July 1943 and the Army in June 1944.

RECOMMENDATION:

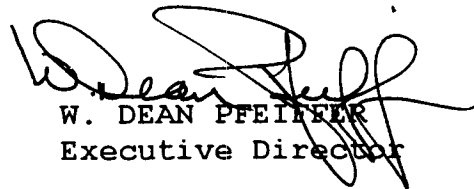
- a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of fraudulent enlistment on 12 June 1946 vice the undesirable discharge actually issued on that date. This should include the issuance of a new DD Form 214.
 - b. That he be paid any monies to which entitled (i.e., unused leave, mustering out pay, etc.) as determined by DFAS.
 - c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
 - d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 9 July 1999.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director